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Case No: BL-2018-002370

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
CHANCERY DIVISION

Royal Courts of Justice
Rolls Building, Fetter Lane, London, EC4A 1NL

Date: 12/06/2020

Before :

Simon Salzedo QC sitting as a Deputy Judge of the Chancery Division

- -

Between :

(1) UMRISH LIMITED	**Claimants**
(2) SPACETEL LIMITED	
(3) VOICETEC SYS LIMITED	
(4) CFS-ZIPP LIMITED	
- and -	
MR BOBBY GILL	**Defendant**

- -
- -

SIWARD ATKINS QC (instructed by **Hugh Cartwright & Amin**) for the **Claimants**
MADELINE DIXON (instructed by **Cole Francis Limited**) for the **Defendant**

Hearing dates: 11 – 13 May 2020

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Judgment Approved by the court for handing down

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Simon Salzedo QC sitting as a Deputy High Court JudgeSimon Salzedo QC sitting as a Deputy High Court Judge :

1. Mr Bobby Gill ("**Mr Gill**"), signed personal guarantees of the obligations of Swisspro Asset Management AG ("**Swisspro**") to repay to the Claimants sums that would fall due under Funding Agreements referable to loans totalling £1.5 million (plus interest). The Claimants have called on Mr Gill's guarantees. Mr Gill denies liability. Mr Gill contends that the guarantees were never delivered by him to the Claimants and that the Claimants are estopped from claiming under the guarantees by reason of certain assurances he was given on their behalf by Mr Srinivasan Venkatesh ("**Mr Venkatesh**").

2. At a trial conducted by Skype for Business I have heard evidence from Mr Gill and Mr Venkatesh and also from 3 other witnesses called by the Claimants. I have been assisted by able submissions made by Mr Siward Atkins QC for the Claimants and Ms Madeline Dixon for Mr Gill.

Issues

3. The issues for resolution are the following:

    i) Delivery. On 27 November 2016, Mr Gill signed the four guarantees (one for each Claimant's Funding Agreement), scanned the signature pages and emailed the scans to the Claimants. It is in issue whether this conduct constituted "delivery" so as to bind Mr Gill to the guarantees, or if Mr Gill was making a "gesture of goodwill to the Claimants", with a view to becoming bound at a later meeting which never took place.

    ii) Estoppel. Mr Gill and Mr Venkatesh met on 26 September 2016 and spoke on the telephone on 6 October 2016. Mr Gill's case, which Mr Venkatesh denies, is that during these conversations Mr Venkatesh represented that Mr Gill should not regard the guarantees as enforceable, the Claimants would not enforce them, the guarantees were "simply to act as a 'sleeping pill' for the Claimants", and the guarantees were to have effect only until 31 March 2017, after which they would have no effect. These representations are said to constitute promises engaging the principle of promissory estoppel, alternatively representations of fact which bind the Claimants not to enforce the guarantees at all or after 31 March 2017.

Facts: approach

4. There is one key dispute of primary fact, which is whether Mr Venkatesh made the representations upon which Mr Gill relies. That issue was the subject of starkly opposing testimony from Mr Gill and Mr Venkatesh, including oral evidence in chief which I directed should be taken on this one issue. The relevant events took place some 3½ years before the witnesses gave evidence and were the subject of discussion in emails and other correspondence. I take account of the points made by Leggatt J about the fallibility of human recollection in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 (Comm) and *Blue v Ashley* [2017] EWHC 1928 (Comm). I have also reminded myself of the need to make findings of fact on the basis of all the

evidence, as explained by the Court of Appeal (Floyd, Henderson and Jackson LJJ) in *Martin v Kogan* [2019] EWCA Civ 1645, [88].

5. In what follows, I start by summarising the undisputed facts and what I find to be the most relevant of the contemporaneous documents and referring to limited parts of the evidence given about them. I then refer to the disputed oral evidence about the key conversations before making findings of fact. This order of consideration does not indicate that one form of evidence is subordinate to the other, but the assessment of fact as an iterative process must start somewhere and in this case it seems to me that the documents are a surer point of departure than any other.

Facts: the documents and undisputed facts

6. The story starts on 9 September 2016 with Mr Robert Courtneidge effecting an introduction by email between Mr Venkatesh and Mr Gill. Mr Courtneidge, a solicitor, was a mutual friend of Mr Gill and Mr Venkatesh. He stated that the introduction was so that Mr Gill could "update you on his fx product which is making customers 2%+ a month on investments now and has over £20m invested." This email reflects the essential business proposition that Swisspro had the ability to carry out trading in currencies on its own account to such profitable effect that it could pay investors 2% per month fixed return. Mr Gill was Chairman of the Board of Swisspro and its sole shareholder. He was interested in finding additional finance for Swisspro. Mr Venkatesh represented the Claimant companies and was interested in finding profitable investments for them.

7. The first meeting was arranged for 26 September 2016 at Home House in Portman Square in London. In addition to Mr Venkatesh and Mr Gill, Mr Courtneidge attended and so did Mr Satish Swaminathan (also known as Mr Chandra). It is not in dispute that Mr Gill explained his business proposition to Mr Venkatesh. Mr Venkatesh indicated that if the Claimants were to invest in Swisspro, then Mr Venkatesh would require a personal guarantee from Mr Gill, and Mr Gill made clear he was reluctant to provide one. It is also agreed that no resolution was reached at this meeting.

8. The day after the meeting, Mr Gill sent to Mr Venkatesh a one page document concerning the business (which Mr Gill accepted was misleading) and asked for Mr Venkatesh's "requirements".

9. On 5 October 2016, Mr Courtneidge sent to Mr Gill a draft form of personal guarantee. Mr Gill stated in evidence that this was done at his request.

10. It is common ground that a telephone conversation took place between Mr Gill and Mr Venkatesh on or about 6 October 2016 during which personal guarantees were discussed again. That is reflected by an exchange of emails on that date in which Mr Gill said he would prepare and send to Mr Venkatesh a draft personal guarantee the following week.

11. On Monday 10 October 2016, Mr Gill sent a draft guarantee he had received from Mr Courtneidge to a lawyer employed by one of his companies, Ms Christou. Mr Gill asked Ms Christou if she had time to look at it, explaining: "I am offering a PG to one for Robert's [Mr Courtneidge's] clients as a personal favour to him on 1m he will put into our investment structure. I wouldn't ordinarily do this as the deal stacks up on its

own merits by a long way. Please can you top, tail, add my name, etc and home address. Check it to make sure it makes sense in relation to our transaction, and possibly neutralise it a bit if it is too heavy handed."

12. It is not clear whether Ms Christou replied to Mr Gill, but later that day, at 18:57, Mr Gill sent the draft form of guarantee unchanged to Mr Venkatesh, together with a draft loan agreement and further explanations of the business proposition. The explanations were accepted by Mr Gill to have been inaccurate. The draft guarantees sent by Mr Courtneidge to Mr Gill and by Mr Gill to Mr Venkatesh included signature blocks for both beneficiary and guarantor and they also included a representation and warranty that "the obligations expressed to be assumed by [the guarantor] under this deed are legal, valid, binding and enforceable obligations.".

13. By email on 11 October 2016, Mr Venkatesh asked for a call to discuss some points on the draft loan agreement, including a clause that provided that no delay by the lender in exercising any rights would operate as a waiver of such rights. The requested conversation took place on 13 October 2016 between Mr Venkatesh, Mr Gill and an employee (compliance manager) of the Claimants, Ms Karthika Venkatesh, ("**Ms Venkatesh**") who took a note. The note stated in relation to the delay clause: "This is intended to benefit the client (SV). Let's say BG is in breach and he says he will pay in 30 days. But for some reason SV waits for more than 30 days for whatever reason. Even if SV wait [sic], this is not treated as you're not going to do something in the future. This is mainly for personal guarantee." In cross-examination, Mr Gill said that he remembered the discussion of the waiver issue and he did not dispute what was written in Ms Venkatesh's note. It is not clear from the note who was speaking but in the light of the earlier email it is likely, and I find, that the note reflects what Mr Gill said to Mr Venkatesh to explain the delay clause in the draft loan agreement.

14. At the end of the note, Ms Venkatesh recorded the following: "Let's try to set up a Key Man Insurance. That way if personal guarantee doesn't work out, then insurance can cover the payment. Send contract details of key man insurance to BG. £1.5 Million Personal Guarantee." Mr Gill said he did not recall this part of the discussion.

15. On 8 November 2016, Mr Gill wrote to Ms Venkatesh attaching a revised draft loan agreement, noting at paragraph 1 of the email that there would need to be three separate agreements with the three companies which were then anticipated to be the lenders. Mr Gill then said at paragraph 2: "We are agreed on the PG, and again you will simply need to add the name of the entity that will benefit from the PG. So you will send me 3 PG agreements for me to execute personally." There was no dispute that "PG" meant "personal guarantee".

16. On 14 November, Ms Venkatesh sent to Mr Gill draft funding agreements and personal guarantees, which were now four each in number. The draft personal guarantees were in the same form as the drafts which Mr Gill had sent to Mr Venkatesh on 10 October, but they now had the names of the Claimants and Mr Gill inserted as beneficiaries and guarantor respectively.

17. On 14 November 2016, the First Claimant entered into a funding agreement with Swisspro.

18. On 15 November 2016, Mr Gill confirmed to Ms Venkatesh (copying Mr Venkatesh) that he was happy with all the drafts (subject to one minor point) and "I will await confirmation and then execute".

19. In response to some correspondence about the entities involved on the Swisspro side, on 16 November 2016, Mr Gill suggested that there was no need to rush the transaction and it could be completed in December.

20. Mr Venkatesh replied the same day, saying that he would not be available in December and did not want to delay.

21. On 17 November 2016, Mr Gill sent Mr Venkatesh a schedule of Mr Gill's assets. The covering email said: "Please see attached. I can confirm that I have no other personal guarantees in place. I do not foresee that I will require to provide any further personal guarantees. If this changes, I will inform you of this requirement in advance. At that point, you may wish to decide to provide notice to terminate your loan agreements …".

22. On 23 November 2016, funding agreements were entered into between Swisspro and each of the Second, Third and Fourth Claimants.

23. Also on 23 November 2016, Ms Venkatesh sent to Mr Gill final personal guarantees "for your reference and execution following a review by Atul." Atul was Mr Atul Amin, the Claimants' lawyer. Ms Venkatesh went on: "Once we receive your go ahead along with the signed agreements, we can arrange for the transfer of funds." Although not flagged by Ms Venkatesh's emails, these drafts were in a different form to the ones that Mr Gill had provided on 10 October. Among other things, they included a signature block for the guarantor only and not for the beneficiary. The guarantor's representations and warranties did not include the statement of enforceability that had been present in the drafts provided by Mr Courtneidge, but they did include representations and warranties that the statement of assets and liabilities provided by the Guarantor to the Lender was true and accurate and the Guarantor would inform the Lender in writing if there was a material reduction in his net assets and the Guarantor would not enter into another personal guarantee without informing the Lender in writing. There was also an undertaking by the Guarantor not to give any further personal guarantees nor increase his liabilities save as disclosed in the statement of assets and liabilities without the consent in writing of the Lender.

24. On Friday, 25 November 2016, Swisspro reported that it had completed its due diligence into the Claimants as a source of funds so the transaction could proceed. Mr Gill reported this to Mr Venkatesh, Ms Venkatesh and Mr Courtneidge by an email at 10:35, asking that the instructions for funding be carefully followed. Mr Gill wrote in bold type and underlined "Can you ask your lawyers to send over the signed personal guarantees to me, so I can sign today and scan back."

25. At 11:03, Ms Venkatesh said "We will coordinate with the companies to have the funds remitted as per the below instructions. Thank you for the signed scanned copies of the Funding Agreement. I have the originals with me, along with the personal guarantees (which I have attached). Should we arrange to meet sometime next week so that you can sign the original copy as well?"

26. Then, at 12:20, Ms Venkatesh wrote another email, saying "Could you please sign and scan back the Personal Guarantee papers directly to Atul [Amin] with a copy to myself and SV [Mr Venkatesh]. Additionally if you could additionally courier the same directly to Atul as well. Once it has been sent, please confirm the same. Once we have received the scanned papers, I have instructed the companies [i.e., the Claimants] to plan to make the transfers."

27. Still on 25 November 2016, at 16:43, Mr Venkatesh sent an email to Mr Gill, copied to Ms Venkatesh and Mr Amin, which read "Dear Karthika, All agreed with Bobby already. No problem. Please effect payment."

28. At 17:02, Mr Gill wrote to Mr Venkatesh, Ms Venkatesh and Mr Amin: "[I] will send over signed PG agreements tonight as soon as I am home. We will send confirmation receipts from the bank as soon as we have them."

29. Mr Gill signed the signature page of each of the four personal guarantees, with each signature being witnessed by his wife, and sent scans of the signed pages to (at least) Ms Venkatesh by email at 19:05 on Sunday, 27 November 2016 (two days after the previous exchanges).

30. The funds were transferred by the Claimant companies to Swisspro and arrived in Swisspro's account on Monday, 28 November 2016.

31. On 16 January 2017, Mr Gill sent a Whatsapp message to Mr Venkatesh stating: "I have provided you with a personal guarantee, which I did at your request and comfort. We prepared the PG and agreements. However your lawyer fees are totally unreasonable. I have also spoken with Robert [Courtneidge] about this and he agrees. I can be prepared to pay 1000 for this, but anything beyond this will not be acceptable. …"

32. On 1 March 2017, Mr Gill wrote to Mr Venkatesh by email: "I will settle the legal fees personally for the PG upon my return. This is nothing to do with our regulated structure and a personal favour I provided to you."

33. During 2017, Swisspro fell behind with the payments due to the Claimant companies. There was a meeting about this on 7 November 2017, evidenced by an email dated 10 November 2017 from Mr Venkatesh to Mr Gill, which recorded arrangements for delayed payments but made no reference to the personal guarantees.

34. In February 2018, there was further email correspondence evidencing that assurances given by Mr Gill about forthcoming payments from Swisspro had not been fulfilled.

35. On 20 March 2018, Mr Venkatesh emailed to Mr Gill saying:

> "Hope you are well.
>
> For some reason, you have send [sic] the last page of the personal guarantee and not the full document. We need to [sic] full signed document.
>
> We require the full version for our audit purposes. Can you please send the same this week? If you need the final version to

> print and sign please find enclosed the previous email sent by Karthika on 25th November 2016 which can be printed out and signed and resent. More than happy to collect the originals from you."

36. On 23 March 2018, Mr Venkatesh emailed to Mr Gill again, saying:

> "I refer to our discussions on Wednesday 21st March when you have mentioned you will go through the email and revert on whether you have sent the original signed personal guarantees document sent to Mr Atul Amin as per the request. If so need [sic] to have the details of when sent. It could not be found by Mr Atul Amin's office.
>
> We also need to talk about the requirement on renewal.
>
> You have mentioned that we can discuss the intention on when the personal guarantee will be used on 10th April 2018 when we meet for lunch.
>
> There is no harm in getting the nitty-gritties sorted."

37. Also on 23 March 2018, Mr Courtneidge sent a Whatsapp message to Mr Gill:

> "Had to speak to SV in the end and he was trying to get me to agree I knew what PGs he agreed with you but I said it was between him and you. He keeps saying it is sleeping pill not sword but why would he need that after all the trading profits he has received already. He is saying he will have to retrieve funds if he doesn't get PGs from you and he can't wait until 10 April."

38. On 9 April 2018, Mr Gill emailed to Mr Venkatesh explaining his absence from a meeting the following day because he had to be "in our Zug office" and "Also I want Robert [Courtneidge] to be present for any discussion on the PG as I believe we have a misunderstanding on why this was put in place."

39. Mr Venkatesh replied on the same date stating that he was happy to meet on Friday along with Mr Courtneidge and "I confirm we do not have any misunderstanding on the issuance of PG by you. PG is the part of our agreement".

40. The meeting took place on 19 April 2018 at Home House in London. On 22 April 2019, Mr Venkatesh sent an email to Mr Gill, copied to Mr Courtneidge, in which he referred to the meeting and asked about payment dates going forward. He then said:

> "We also discussed on the personal guarantee which has been provided by you, but the originals are not handed over except the last signed page sent to us.
>
> I have mentioned to you that this needs to be sorted. You have acknowledged the existence of the same. You have asked whether the personal guarantees will be used for minor

> defaults. I have mentioned that there were delays in the past 6 to 9 months for various reasons and as it was minor and as you were in contact with us explaining the reason for the minor non-confirmatory reasons we have viewed the reasons and always we were reasonable in dealing with you. I confirmed only if the payments are not done as per promise and in case the same has been extensively delayed continuously for 4 months or more and in case if I am unable to contact you apart from the default clause mentioned.
>
> Let us conclude this before the end of the month.
>
> More than happy to meet on 1st or 2nd May if required.
>
> The loan will not be entertained without your personal guarantee."

41. Mr Gill replied on 25 April 2018 saying:

> "I will discuss with the Team next week in depth whether I will be prepared to offer personal guarantees. This will be based on a number of factors, including my involvement with Swisspro in the future.
>
> If personal guarantees will not be offered, I will then discuss exit terms for your loan.
>
> If personal guarantees will be offered, I will need to settle with you.
>
> - Timeframe for operation
>
> - When they will be exercised"

42. On 18 May 2018, Mr Venkatesh emailed to Mr Gill expressing his disappointment at more broken promises about various payments and the lack of response from Mr Gill to "my continuous SMS". He also said: "As we have discussed and agreed in the noon meeting at the Home house on the 19th April, I would like to reiterate that going forward if the terms of our contract are not met and you continue to default on the payments we would like to terminate the contract." Personal guarantees were not mentioned in this email.

43. On 23 July 2018, Mr Gill wrote to Mr Venkatesh asking for patience for another 6 weeks and saying:

> "In terms of the PG side, our understanding on fundamental principles was the following:
>
> I. PG to be used as a 'sleeping pill' only. Not as a SWORD. (YOUR WORDS).

> 2. PG to be used for a short term basis only (ie under 12 months as we were a new company with no track record of making you payments).
>
> 3. I have also taken separate legal opinion on the enforceability of the PG."

This was followed by a new set of principles that Mr Gill suggested "before I enter into any PG."

44. Mr Venkatesh replied that day saying: "Sorry Your suggestion is not going to work. PG is for the total outstanding not just for capital. I do not want to go in details. Please arrange to return the capital and all accrued interest."

45. Still on 23 July 2018, Mr Gill asked Mr Venkatesh which part of the response was not acceptable. Mr Venkatesh replied on 24 July stating that there were two separate issues: the Personal Guarantee and the new proposal. In relation to the existing guarantees, Mr Venkatesh quoted Mr Gill's email of 25 November 2016 promising to send over the signed guarantees that night and said that he now needed the original signed guarantees "for audit purposes". He then stated "As far as I am concerned, this was the original agreement and you must adhere to it. If you are not prepared to adhere to it, then as requested, please return my funds together with interest."

46. After that, the correspondence about the guarantees switched to the lawyers.

Witness evidence

47. Mr Venkatesh was what some may call a "good" witness: clear, straightforward, and nothing he said smacked of self-justification or defensiveness. He was extremely well prepared. He had an excellent knowledge of the relevant documents and was well versed in the issues in the case. He had also clearly taken his witness familiarisation training seriously. He was a serious man who was determined to give the best account of himself that he could. His evidence was very definite on all points. None of this is necessarily a criticism of Mr Venkatesh, but ultimately his actual recollection had been overlaid with a high degree of preparation and no doubt the kind of repeated retrieval of memories of which Leggatt J spoke in *Gestmin*.

48. Ms Venkatesh was not apparently partisan, seemed less well versed in the issues in the case than Mr Venkatesh, but very clear on the points within her knowledge. Everything that she said was consistent with the documentary record and I consider her to be an impressive witness on whose testimony I can rely.

49. Mr Courtneidge was embarrassed by his position as a friend of both main protagonists. He professed himself neutral between them but, more importantly for present purposes, he denied any first hand knowledge of what had been agreed about personal guarantees. His evidence was not important to any of the issues I have to decide.

50. Mr Swaminathan gave evidence that he remembered the discussion of personal guarantees on 26 September 2016 and that Mr Venkatesh did not make any representations of non-enforceability or limited time. It was put to Mr Swaminathan

by Ms Dixon that he had no good reason to recall that part of the discussion which did not directly concern him. Mr Swaminathan said that he did remember it and it was not suggested that his evidence was anything less than honest.

51. Mr Gill was articulate but had a tendency to give long irrelevant answers, especially when the question was difficult. On certain issues where his evidence was difficult to square with the documentary record, Mr Gill accepted that his own explanations did not make sense. In particular he accepted that: (i) the two representations alleged – that the guarantee would not be enforceable at all and that it would not be enforceable after 31 March 2017 – were not consistent with each other; and (ii) the statement he claimed Mr Venkatesh had made that the guarantee was needed as (only) a sleeping pill was hard to square with a representation that the guarantee would not be enforceable.

52. Mr Gill as a party to this dispute has had ample time to consider the issues and the obvious points that would be, and were, put to him in cross-examination. As a solicitor, Mr Gill is able to understand legal arguments and nuances. Despite these advantages he did not give internally consistent or straightforward answers to the most important questions.

53. For the different (almost opposite) reasons given above, I do not place excessive weight on the evidence of either main protagonist. Where it is essential to choose, I generally prefer Mr Venkatesh's evidence to Mr Gill's. But wherever it is possible to do so, I have given greater weight to the contemporaneous documents and my judgment as to the inherent probabilities in the light of those documents than to the oral evidence.

Issues of fact

54. In this part of the judgment, I address the issues of fact which are controversial between the parties. I will consider them in chronological order.

The meeting on 26 September 2016: what was said there

55. The first set of issues relate to the discussion at the meeting on 26 September 2016.

56. It was common ground that at that meeting Mr Venkatesh said that he would require a personal guarantee if an investment was to be made by the Claimants in Swisspro. It is also common ground that Mr Gill did not, at that stage, agree to provide one.

57. In closing submissions, Ms Dixon formulated the representations which Mr Gill alleged Mr Venkatesh made at the meeting on 26 September 2016 as follows:

> "a. D should not regard the guarantees he was asked to provide to the Cs as enforceable;
>
> b. The guarantees should be provided only as a gesture of D's "goodwill and intentions" to the Cs which would provide Mr Venkatesh and the Cs with "comfort;" the Cs would not enforce them;

c. The guarantees were simply to act as a "sleeping pill" for the Cs;

d. The guarantees were only to have effect for a "short time," until 31 March 2017, after which they would have no effect."

58. In support of the submission that these representations were made, Ms Dixon relied on the following principal matters:

i) Mr Gill's evidence that these representations were made and that there was a relationship of trust between himself and Mr Venkatesh which led him to believe them and to seek to provide what Mr Venkatesh asked for. As to that, I have set out above that I give Mr Gill's evidence little weight where not corroborated. I do not dismiss it altogether, but I did not find it persuasive.

ii) There was some evidence that Mr Venkatesh was keen to do the deal with Mr Gill. Ms Dixon sought to demonstrate that the Claimant companies needed the returns that Mr Gill promised and referred to correspondence which suggested that Mr Venkatesh was in more of a hurry than Mr Gill. In my judgment, this material went no further than showing that the transaction was carried out between two willing parties and did not suggest that Mr Venkatesh would have been prepared to agree on terms which were not satisfactory to him.

iii) The evidence of Mr Courtneidge's Whatsapp messages to Mr Gill in March 2018 was that the phrases "sleeping pill" and "not a sword" were used by Mr Venkatesh. In cross-examination, Mr Courtneidge said that he had no recollection of the terms being used at the meeting on 26 September 2016 and that each of Mr Gill and Mr Venkatesh told him that the words originated with the other. Nevertheless, there is no doubt that in his messages to Mr Gill, Mr Courtneidge said or implied that these terms originated with Mr Venkatesh. That evidence seems to me to be consistent with the inherent probabilities, as Ms Dixon rightly submitted. In a discussion where A is asking B for a personal guarantee which B does not wish to provide, it makes little sense for B to say that any such guarantee would be (only) a sleeping pill and not used as a sword. Those terms are more likely to originate with A. Accordingly, I find that these terms were used by Mr Venkatesh as part of his attempt to persuade Mr Gill to provide the guarantees.

iv) Another submission of Ms Dixon's which I accept is that the likelihood is that the schedule of Mr Gill's assets was not requested at the meeting on 26 September 2016. As she pointed out, it did not feature in the correspondence until 16 November 2016. It seems to me to be more likely that this was requested later. However, I am less persuaded by Ms Dixon's submission that it is significant that Mr Venkatesh took no steps to check the assets shown on the schedule when it was produced. In my judgment, the request for such a schedule, whenever it was made, is an indication that the parties were proceeding on the basis that the guarantee was a real security and Mr Venkatesh's omission to check the schedule probably indicates that it did not occur to him that Mr Gill would lie in such an easily detectable way at that early stage of their relationship.

v) Ms Dixon said that the Claimants had failed to demonstrate that in fact they awaited the signature pages of the personal guarantees before releasing the funds and that I should find that the absence of proof of that fact was an indication that the guarantees were understood not to be critical to the transaction because they were not truly enforceable. I do not find this argument persuasive. Even on Mr Gill's evidence, the personal guarantees were essential to the transaction. His explanation was that he understood that Mr Venkatesh needed the guarantees to persuade other stakeholders in the Claimants to agree to the deal. On this basis, they were important whether or not Mr Venkatesh had given the alleged assurances of unenforceability.

59. Against those points, Mr Atkins QC argued that the representations were not made because:

i) Mr Gill's account of what was said was internally inconsistent. I agree that this is both true and a matter of importance. Despite the obvious nature of the point, no explanation was ever given on behalf of Mr Gill as to how it was consistent to promise both that the guarantee would never be enforced and also that it would not be enforced after 31 March 2017. Nor was there a good explanation of how it was consistent to promise that the guarantees would be unenforceable while stating that they were required to provide "comfort" or that they would function as a "sleeping pill".

ii) Mr Gill's case that the parties proceeded on the footing that the guarantees were not enforceable is also difficult to square with his own case (on the delivery issue) that they also proceeded on the footing that a formal signing ceremony would take place before the guarantees were deemed delivered. That point also seems to me to be well founded.

iii) Mr Gill's explanations of the purpose of the guarantees included one given in oral evidence that they were intended to accord priority to the Claimants over other potential creditors of Swisspro. As Mr Atkins QC pointed out, they did not provide legal priority but could give commercial priority (in the sense that Mr Gill would be incentivised to ensure the Claimants were paid first) only if they had some legal effect.

iv) Sense could be made of Mr Gill's evidence if he recalled Mr Venkatesh saying something along the following lines: if Swisspro establishes a three month track record, or if the deal is as safe as you say, then we will not need to call on the guarantees. Such statements would fall short of any representation that would found an estoppel. As Mr Atkins QC recognised, the difficulty for him is that Mr Venkatesh staunchly denied making any such statements. I will return later to what was actually said.

v) Mr Venkatesh's evidence is that he had no need to refer to other stakeholders in the Claimant companies, or use them as an excuse to require the guarantees, because Mr Venkatesh himself was the decision maker. His evidence was indeed as robust on this point as on all others. Mr Atkins QC also made the point that even if Mr Gill was right that Mr Venkatesh said he needed the guarantees to persuade other stakeholders of the merits of the transaction, this would make little sense unless they were intended either to provide real

security, or to mislead the other stakeholders, and Mr Gill disavowed any allegation of that latter kind.

60. In addition to the above points discussed in closing submissions, it was implicit that Mr Atkins was relying on the evidence of both Mr Venkatesh himself and Mr Swaminathan to the direct effect that the representations were not made.

61. My assessment of what happened at the meeting on 26 September 2016 is based on the above discussion of the matters raised in closing submissions and also on the additional points I refer to immediately below.

62. As is common ground, Mr Venkatesh told Mr Gill he would require personal guarantees, and Mr Gill was reluctant to provide them. In these circumstances, it seems to me to be almost inevitable that there would be a discussion along the lines of Mr Venkatesh seeking to persuade Mr Gill that if the investment was as safe as Mr Gill was presenting it to be, then such a guarantee would not involve a great risk for Mr Gill. In the course of that conversation, it is more likely than not that Mr Venkatesh said he would regard the guarantee as a "sleeping pill" and as providing "comfort" to himself and any other relevant decision makers at the Claimant companies. It is common ground that such phrases were used by one of the parties and it seems to me to make sense that it would have been Mr Venkatesh. It also seems to me to be likely that Mr Venkatesh made some reference to the guarantees not being used "as a sword" (again, it is common ground that somebody said something to that effect), with the meaning that he would not call on them immediately any small default occurred, but instead would hold them in reserve in case any issue could not be resolved between business people dealing in good faith. That appears to be entirely consistent with the way that Mr Venkatesh in fact behaved later on when defaults did occur.

63. Thus far, I have accepted part of Mr Gill's case as to what was said at the meeting on 26 September 2016. However, I do not accept that Mr Venkatesh said anything to the effect that the guarantee would not be enforceable at all, or after any particular date. There was no reason for him to want an ineffective guarantee. Such a statement would have been inconsistent with the documentary record that I have set out above and I find it impossible to believe that if Mr Gill thought he had the benefit of such a statement, he would have signed the guarantees without making any reference to it. In my judgment the emails are redolent of the guarantees being a genuine and important part of the transaction, which only makes sense on the assumption that they were understood to be effective. I also do not understand why Mr Gill refused to give the guarantees on 26 September 2016 if he truly understood Mr Venkatesh to have disavowed any potential reliance on them.

64. An example of the emails which have influenced my conclusion above is the email of 10 October 2016 from Mr Gill to Ms Christou. In relation to that email there are two important matters. First, if Mr Gill had by this time received an assurance from Mr Venkatesh that the guarantee would not be enforceable, then it is surprising that he did not mention this in his email to Ms Christou. In cross-examination, Mr Gill's response to that point was:

> "Yes, I mean, I agree with that. I agree with what you're saying. Despite my legal background and what I outlined earlier to my

> Lord, I was coming at this from a different perspective, a perspective that we're businessmen, we've agreed principles, we agreed the bones of a transaction on 26 September. One of the things Mr Venkatesh was keen to push through was he needed a personal guarantee, he needed something that he could satisfy the other claimants. I sent a draft on that basis only and the representations that he made."

65. Secondly, if Mr Gill was relying on an assurance from Mr Venkatesh that the guarantee would not be enforceable, then it is surprising that he did not suggest any alteration to the representation and warranty of enforceability to which I have referred above. Mr Gill's response to this point in cross-examination was:

> "I could also see that there's no entire agreement clause in here, and I was relying on what Mr Venkatesh had said, that this would be something that would not be enforced but would give him some leverage up to 31 March 2017."

66. It is notable that Mr Gill did not suggest that he had failed to read the draft, but instead claimed to have relied on the absence of an entire agreement clause. I find that evidence incredible. If he had been thinking at all about the interaction between the warranty of enforceability and the alleged assurances from Mr Venkatesh, then he could not have agreed to the draft without qualification.

67. The conversation on 13 October is another aspect of the written record which is impossible to square with Mr Gill's case that the parties were proceeding on the basis that the personal guarantee would not be enforceable. If that was the case, then the explanation given by Mr Gill that the non-waiver provision in the loan agreement was "mainly for personal guarantee" would have made no sense. In fact, the explanation was correct and shows that the guarantees were intended to have effect.

68. Another example is the assurance given by Mr Gill on 17 November 2016, and repeated in the final version of the guarantees themselves, that he would not give other personal guarantees, which is hard to square with the suggestion that it had been agreed that the personal guarantees would be of no effect. Mr Gill's evidence was that the assurances given in this email were requested by Mr Venkatesh or his lawyer "as a formality". This explanation makes no sense: Mr Gill would obviously have mentioned that the guarantees were understood to be unenforceable before giving such an assurance, if he had believed that to be the position.

69. Similarly, there is no basis at all for Mr Gill to have agreed, as he did agree, to provide a schedule of his personal assets and liabilities if his personal guarantee had been understood to be a "mere formality" which would never be capable of enforcement.

70. Overall, the record is clear that the parties operated on the footing that the guarantees were real and effective, which is inconsistent with Mr Gill's case that Mr Venkatesh made serious representations that they would never be enforced.

71. It is possible that something might have been said about a difference in the position before and after the end of March 2017, but I reject Mr Gill's claim that whatever was

said it amounted to a clear representation that the guarantees would not be enforceable after that date. There is nothing in the documentary record to support such a representation having been made and relied on and, again, I cannot see why, on his case, Mr Gill would have carried on without making such a record, even in March 2018 when Mr Venkatesh started asking for a signed original following Swisspro's defaults.

72. It follows that in terms of Ms Dixon's formulation set out at paragraph 57 above, I find:

    i) The statement in (a) was not made at all.

    ii) The statement in (b) was made in part: Mr Venkatesh did say that the guarantees were required to provide him and the Claimants with "comfort" and he may well have said that he viewed them as a gesture of Mr Gill's good intentions. But otherwise, the statement was not made.

    iii) The statement in (c) ("sleeping pill") was made, but without the word "simply" or its connotations.

    iv) The statement in (d) was not made.

The telephone call on 6 October 2016

73. It seems most likely that it was during, or shortly after the telephone conversation on 6 October 2016 that Mr Gill agreed to provide personal guarantees. Mr Gill's case is that the statements he relies upon were repeated by Mr Venkatesh on that occasion. I reject that case to the same extent, and for the same reasons, as I have set out above in relation to the meeting on 26 September 2016. The only difference between the factors that go into that judgment in relation to the telephone call as opposed to the meeting is that Mr Swaminathan's evidence is not relevant to the telephone call. But that is not enough to make any difference to my finding as to what was said.

The release of the monies

74. There was an issue about whether the Claimants released the payment of the loan monies to Swisspro before or after they had received the signature pages of the guarantees from Mr Gill. In closing submissions, Ms Dixon realistically recognised that she could not make a positive case in this regard, but submitted that the Claimants could have proved the matter by documents and had failed to do so. I accept the submission that this was a matter which the Claimants asserted and were required to prove. I also accept that the documents before the Court were not conclusive as to when the payments were released by the Claimants prior to their arrival in Swisspro's account on Monday 28 November 2016. I doubt if it matters to anything I have to decide, but in case it does, I find that the monies were not released until after the signature pages had been received. The documents before the Court are consistent with that finding, save for Mr Venkatesh's email of 25 November 2016 to Ms Venkatesh stating "Please effect payment". Ms Venkatesh explained that she and Mr Venkatesh both knew that she could not "effect payment", as she did not have the necessary authorisation to make payments through the Claimants' online banking system (which as Mr Venkatesh explained was restricted to Mr Venkatesh and his

wife). So this email was instruction to prepare the payment instructions in the expectation that Mr Gill would be as good as his word and send the signed guarantees. The payments were only in fact released after that had happened late on 27 November 2016.

The effect of the signatures

75. Both counsel asked me to make findings of primary fact as to the state of mind of Mr Venkatesh and Mr Gill concerning the effect of the sending of the scanned signatures by Mr Gill to Ms Venkatesh on 27 November 2016. As I will discuss shortly, I do not believe that such findings are necessary or relevant, but since both parties have asked for them, I will make them.

76. The signature block against which Mr Gill signed his name stated "EXECUTED and DELIVERED as a DEED (the day and year first above written) by BOBBY GILL in the presence of:" Below that was space for the name, signature, address and occupation of a witness, which were completed with the details and signature of Mr Gill's wife.

77. Mr Gill's evidence was that he understood that there was going to be a completion meeting the following week at which all parties would sign all the documents. Whether or not he might have expected such a meeting to take place, Mr Gill had no sufficient reason to believe the monies would be released until he sent the signatures. Bearing in mind his own legal qualification, I am satisfied that Mr Gill understood that by signing the guarantees and scanning the signature pages to Ms Venkatesh, he was indicating that he intended to be immediately bound by them.

78. I am less sure what, if anything, Mr Venkatesh thought was the significance of the signature pages. The emails from 2018 strongly suggest that at that stage Mr Venkatesh was concerned that the guarantees might not bind Mr Gill in the absence of full documents with original signatures. However, that seems to me to be irrelevant and might have been influenced by some combination of legal advice, fear of not getting paid and fear that Mr Gill as a solicitor might be relying cleverly upon legal technicalities. If, which I doubt, it is useful to make a finding of fact, then I find that Mr Venkatesh understood on the evening of 27 November 2016 that Mr Gill had indicated his intention to be immediately bound by the guarantees, as this is the obvious inference from the emails about the release of the funds and the need for the signatures to be provided and from words of the signature block against which Mr Gill signed his name.

Mr Gill's reliance on representations

79. To the extent that Mr Venkatesh made representations (and I have made my findings on that issue above), I find that Mr Gill relied upon them in deciding to enter into the guarantees. He was plainly reluctant to do so and I accept that he might well not have done so if he had not considered Mr Venkatesh to be a person of his word with whom he could do business in good faith on both sides. The only representation which I have found was made which might have influenced Mr Gill to enter the guarantees was the representation that they would not be called on for minor infractions. As I have already mentioned, the Claimants have conducted themselves in accordance with this approach in any event.

Other factual issues

80. Although other factual disputes emerged through the evidence, no other findings are required. I asked both counsel to provide me with lists of the findings of fact which they invited me to make and I believe I have made findings on substantially all of them.

The delivery issue

81. Since Mr Gill signed the guarantees and transmitted the signature pages to Ms Venkatesh whom he knew would receive them on behalf of the Claimants, it seems to me that he plainly delivered them. Ms Dixon submitted that there was no delivery, because greater formality was required and would be expected in the form of passing across the complete document with an original signature. In my judgment, this submission is not realistic in the current age of instant communication. If A sends to B a scanned copy of A's signature on an identified document, then subject to any contrary context, A indicates to B an intention to be bound by the terms of that document. In the present case, the context is confirmatory, not contrary.

82. It is possible to deliver a deed in escrow rather than unconditionally, but there is nothing in the facts of this case to support such an escrow. Mr Gill's case must have been that the deed would become binding if and when all the documents were signed together at the allegedly proposed "completion meeting". But the only basis for this idea is Ms Venkatesh's question in her email of 25 November 2016: "Should we arrange to meet sometime next week so that you can sign the original copy as well?" I cannot see that this is anything like enough to impose escrow conditions on the guarantees.

83. Ms Dixon relied on *Bibby Financial Services v Magson and others* [2011] EWHC 2495 (QB) where a deed was held not to have been delivered, despite being signed and handed over in a pub, because the parties all understood that amendments would be made before it was finalised. But in the present case, there was no intention that any amendments would be made, so the same reasoning does not apply.

84. What matters to this issue is not the subjective intentions of either party, but the objective assessment of what Mr Gill did, or in other words, whether a reasonable recipient in the position of the Claimants would have understood Mr Gill to have delivered the guarantees unconditionally, rather than in escrow. As Munby J put it with the agreement of Chadwick and LJJ in *Bank of Scotland v Henry Butcher & Co* [2003] EWCA Civ 67, [64]:

> "The intention of the grantor may be of the greatest importance – may indeed be determinative – in a case, such as *Beesly v Hallwood Estates Ltd* [1961] 1 All ER 90, [1961] Ch 105 or *D'Silva v Lister House Development Ltd* [1970] 1 All ER 858, [1971] Ch 17, where it is being said that the grantor has delivered a document as a deed even though it has not been sent to the other side at all and indeed has never left his custody. But different considerations must apply where, as in the present case, the executed document is sent to the other party. In my judgment, a person who has executed a document containing on

> its face, as the guarantee did in the present case, a clear statement that it has been 'executed and delivered as a deed', and who then sends that document to the other party without any expressed indication that the document is being delivered otherwise than as a deed, simply cannot set up some private mental reservation or uncommunicated intention as the basis of a contention that the document was in fact delivered not as the deed it purported to be but merely in escrow."

85. The same applies here and also applies to any private doubt to which Mr Venkatesh may been subject about the legal effect of having received only the scanned signature pages. In my judgment the guarantees were delivered unconditionally, as indicated on the face of the document that Mr Gill signed, had witnessed, scanned and sent to Ms Venkatesh.

Promissory estoppel

86. Mr Gill's case was that he relied on the representations that he alleged Mr Venkatesh made in agreeing to enter into the guarantees and that, as a result, it is now inequitable for the Claimants to rely on the guarantees, pursuant to the doctrine of promissory estoppel. That claim fails because I have found that the relevant representations were not made.

87. Although I have found that some of the statements alleged by Mr Gill were made, Ms Dixon did not suggest that Mr Gill's defence could succeed on the basis only of those statements. She was right not to do so, because those statements were not clear and unequivocal at all, and certainly not in any sense of meaning upon which the Claimants require to go back in order to succeed in their claim under the guarantees.

88. I also hold that there is nothing inequitable about the conduct of the Claimants in claiming under the guarantees in the light of the statements which I have found were made.

89. A point of law was argued which does not arise on my findings of fact. But I will express my conclusions on it as briefly as I can. The point taken by Mr Atkins QC was that promissory estoppel cannot arise otherwise than in the context of a pre-existing legal relationship. Mr Atkins QC referred to *Chitty on Contracts* (33rd ed) at paragraphs 4-087 and 4-089, the latter of which states that it has been suggested that the doctrine can apply without a legal relationship, but that such suggestion is mistaken. He also relied on the expressly *obiter dictum* on this issue of Henderson LJ in *Harvey v Dunbar Assets Plc* [2017] EWCA Civ 60, [59] – [62]. Henderson LJ said at [60]: "The doctrine of promissory estoppel, normally at any rate, presupposes the existence of a legal relationship between the parties, in the context of which the promise or assurance which gives rise to the estoppel is made." After citing *Snell's Equity* and *Thorner v Major*, Henderson LJ went on at [62] "it seems clear to me that the weight of existing authority supports the view that a promissory estoppel can only arise in the context of an existing legal relationship".

90. The most important existing authority referred to by Henderson LJ was the *dictum* of Lord Walker of Gestingthorpe in the proprietary estoppel case of *Thorner v Major* [2009] 1 WLR 776, [61]:

> "That is one of the main distinguishing features between the two varieties of equitable estoppel, that is promissory estoppel and proprietary estoppel. The former must be based on an existing legal relationship (usually a contract, but not necessarily a contract relating to land). The latter need not be based on an existing legal relationship, but it must relate to identified property (usually land) owned (or, perhaps, about to be owned) by the defendant."

91. Ms Dixon submitted that Mr Atkins QC's authorities were all *obiter dicta* and it was open to me to find that promissory estoppel could apply without a pre-existing legal relationship. She referred to *Snell's Equity* (34th ed) which states at 12-026: "The better view, it is submitted, is that there is no independent requirement of a legal relationship as such; there is simply the inherent limit that promissory estoppel may only affect a right that A would otherwise have against B." The footnote to that sentence acknowledges the disagreement with it of Henderson LJ in *Harvey v Dunbar Assets*, but *Snell* persists in it nevertheless.

92. In support of the *Snell* view, Ms Dixon referred to two judicial authorities. The first was *Evenden v Guildford City AFC* [1975] ICR 367 in which Lord Denning MR said:

> "Mr. Reynolds referred us, however, to Spencer Bower and Turner, *Estoppel by Representation*, 2nd ed. (1966), which suggests, at pp. 340–342, that promissory estoppel is limited to cases where parties are already bound contractually one to the other. I do not think it is so limited: see *Durham Fancy Goods Ltd. v. Michael Jackson (Fancy Goods) Ltd*. [1968] 2 Q.B. 839, 847. It applies whenever a representation is made, whether of fact or law, present or future, which is intended to be binding, intended to induce a person to act upon it and he does act upon it. That is the case here. Mr. Evenden entered into his employment with the football club on the faith of the representation that he would not be prejudiced and that his employment should be regarded as a continuous employment. Acting upon it, he has lost any rights against the supporters' club. The football club cannot be allowed to go back on it. His employment is to be treated as continuous for the whole 19 years. He is entitled to the full redundancy payment of £459."

93. As appears from that passage, Lord Denning MR held the entry by the employee into a contract of employment with the employer was sufficient reliance to engage the principle of promissory estoppel even though there was no previous legal relationship between those parties. Browne LJ and Brightman J also decided the case in favour of the employee, but did not rely on promissory estoppel, though Browne LJ said that he would have been prepared to do so had it been necessary.

94. *Evenden* was overruled by the House of Lords in *Secretary of State for Employment v Globe Elastic Thread Co Ltd* [1980] AC 506. At 518 – 519, Lord Wilberforce said that estoppel did not arise in a situation where there was a contract to retain the benefit of the previous employment because "Even if an estoppel may give rise to a contractual obligation, it does not follow, and it would be a strange doctrine, that a

contract gives rise to an estoppel." It could perhaps be said that the basis on which *Evenden* was overruled did not rule out the possibility of promissory estoppel applying in the absence of existing legal relations, but what was said in *Evenden* to that effect is now no more than an *obiter dictum*, the decision having been overruled. Despite its eminent source, I have no doubt that the *dictum* I have quoted above from *Evenden* is too widely stated.

95. Finally, Ms Dixon relied on *Maharaj v Chand* [1986] AC 898. That was a decision of the Privy Council on appeal from the Court of Appeal of Fiji. A couple lived together as man and wife without being legally married. The plaintiff acquired from a housing authority a lease of certain land which was only available to married couples on the stated basis that he was married to the defendant and the land would used to build a home for his family. The defendant gave up a flat of her own to move into the new home. Certain expenses were paid by the couple jointly and the defendant made contributions to the instalments needed to keep the property. The relationship ended and the plaintiff sought possession against the defendant. The Privy Council held that the plaintiff was estopped from doing so. The reasoning in the advice delivered by Sir Robin Cooke included this (emphasis added):

> "On Rooney J.'s findings, at the time of the acquisition of the land and the building of the house the plaintiff represented to the defendant that it would be a permanent home for her and her children. Indeed the representation was that she would be treated as living there as his wife. In reasonable reliance on the representation she acted to her detriment by giving up the flat. Moreover she supported the application to the housing authority, she used her earnings to pay for household needs, and she looked after her de facto husband and the children as wife and mother. **A sufficient relationship had previously existed between the parties**. It is not possible to restore her to her former position.
>
> In these circumstances it would plainly be inequitable for the plaintiff to evict her. It is right to hold that as against him she has in effect permission to reside permanently in the house, on the basis that the children may be with her for as long as they need a home."

96. The sentence I have emphasised shows that the Board proceeded on the basis that some "sufficient relationship" "between the parties" was required before a promissory estoppel could arise. The Board's advice does not identify precisely what the relationship was, so it leaves open the question whether it had to be a "legal relationship".

97. Mr Atkins QC submitted that in all of the cases where an estoppel was recognised, the promisee had an existing relationship, even if not with the promisor, and the representation induced the promisee to alter or move away from their rights under that existing relationship.

98. The origins of the doctrine of promissory estoppel lie in cases where there was an existing contractual relationship between promisor and promisee, though the

requirement has generally been expressed as a broader one of a "legal relationship" rather than only contractual. The doctrine is usually traced back to the classic statement of Lord Cairns in *Hughes v Metropolitan Railway Co* (1877) 2 App Cas 439, 448:

> "it is the first principle upon which all Courts of Equity proceed, that if parties who have entered into definite and distinct terms involving certain legal results — certain penalties or legal forfeiture — afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or will be kept in suspense, or held in abeyance, the person who otherwise might have enforced those rights will not be allowed to enforce them where it would be inequitable having regard to the dealings which have thus taken place between the parties."

99. The "equitable principle" from *Hughes* was applied again by the House of Lords in *Tool Metal Manufacturing Co Ltd v Tungsten Electric Co Ltd* [1955] 1 WLR 761. It was recognised as a form of estoppel by the House of Lords in *Woodhouse AC Israel Cocoa SA v Nigerian Produce Marketing Co Ltd* [1972] AC 741, with Lord Hailsham of St Marylebone LC pointing out at 758 that "the time may soon come when the whole sequence of cases based on promissory estoppel since the war, beginning with *Central London Property Trust Ltd v High Trees House Ltd* [1947] K.B. 130 may need to be reviewed and reduced to a coherent body of doctrine by the courts."

100. Another decision of the highest authority is the advice of the Privy Council in *Motor Oil Hellas (Corinth) Refineries SA v Shipping Corporation of India: The Kanchenjunga* [1990] 1 Lloyd's Rep 391, 399, where Lord Goff of Chieveley said:

> "Election is to be contrasted with equitable estoppel, a principle associated with the leading case of *Hughes v. Metropolitan Railway Co* (1877) 2 App Cas 439. Equitable estoppel occurs where a person, having legal rights against another, unequivocally represents (by words or conduct) that he does not intend to enforce those legal rights; if in such circumstances the other party acts, or desists from acting, in reliance upon that representation, with the effect that it would be inequitable for the representor thereafter to enforce his legal rights inconsistently with his representation, he will to that extent be precluded from doing so."

101. It seems to me, in respectful agreement with Henderson LJ in *Harvey v Dunbar Assets*, that authority in England and Wales is strongly to the effect that promissory estoppel requires the pre-existence of a legal relationship between the promisor and promisee. I am not convinced that a relationship between the promisee and somebody else would suffice on the law as so far recognised. A basis on which it might be open to higher courts to broaden this approach would be the development of a single over-arching principle of estoppel as discussed, but not adopted, by the Court of Appeal in *Baird Textile Holdings Ltd v Marks & Spencer Plc* [2001] EWCA Civ 274.

102. However, I think that the facts of the present case illustrate a limit to any development in that direction. Even if the law might develop further in terms of broader equitable restraints on conduct, it does not cover a case like this one, even if I had accepted Mr Gill's case on the facts in full.

103. If Mr Gill had succeeded on the facts, then I would have found that Mr Venkatesh had promised not to enforce the guarantees and Mr Gill had relied on that promise in deciding to enter into the guarantees. The reliance alleged in this case is entry into the very legal relationship which the promise is said to have varied. There is an inherent contradiction between the promise not to enforce certain terms and the act done in supposed reliance upon it, viz. agreement to those very terms.

104. In contrast to the position in the classic promissory estoppel cases, there is no concern in such a situation about the potentially unjust effect of the strict rules of the law of contract requiring consideration to support a promise (cf *Foakes v Beer* (1884) 9 App Cas 605). The law already boasts several tools with which to analyse such a situation including collateral warranty, misrepresentation and estoppel by convention. I see no pragmatic benefit – even were it possible somehow to circumvent *Jorden v Money* (1854) 5 HL 185 – to expanding the application of the doctrine of promissory estoppel to cover such cases.

105. As an alternative to promissory estoppel, Ms Dixon sought to put Mr Gill's case in terms of estoppel by representation of fact. Mr Gill's evidence included several assertions that Mr Venkatesh stated that the guarantees would not be enforceable, at all, or after 31 March 2017. On the face of it, this was evidence of a representation about the legal effect of the guarantees. However, Mr Gill did not suggest that he understood the terms of the guarantees to be restricted in accordance with that statement. His evidence was only consistent with having understood that he was signing an unlimited personal guarantee. Even had I found the representations to have been made in this form, they were not relied on by Mr Gill in that sense, so they could not found an estoppel.

Quantum

106. The claim is for payment under the personal guarantees of the sums unpaid by Swisspro under its Funding Agreements with the Claimants, including £1,500,000 of principal and contractual interest. I was told at the end of the trial that the precise quantum was close to being agreed. I hope that the parties can agree the appropriate figure up to the date of the hand down of this judgment. If not, I will invite submissions on any issues that may remain.

Conclusion

107. The Claimants' claim against the Defendant succeeds.